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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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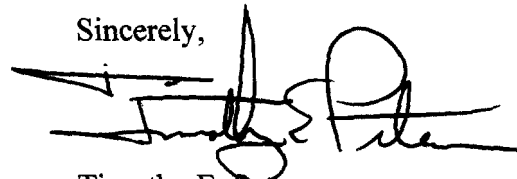
Secretary
Federal Communications Commission
1919 M. Street N.W.
Washington, D.C. 20554

RE: Petition of U.S. West Communication Inc. For relief from Barriers to the
Deployment of advanced telecommunications services in CC Docket No.
98-26.

Dear Sir or Madam:

Enclosed please find an original and 12 copies of the Comments of the National Black
Chamber of Commerce and other African American businesses on the above captioned cause.

Sincerely,



Timothy E. Peterson
Of Counsel

cc:

Ms. Janice M. Myles, FCC
International Transcription Services
William Lake, et al., U.S West
Robert B. McKenna, et al., U.S. West
Harry Alford, NBCC

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MAR 18 1998

Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of U S WEST Communications)
Petition for Relief from Barriers to Deployment of) CC Docket No. 98-26
Advanced Telecommunications Services)

COMMENTS OF THE NATIONAL BLACK CHAMBER OF COMMERCE, INC.;
AND OTHER PARTIES ON BEHALF OF AND AS
REPRESENTATIVES FOR ALL AFRICAN AMERICAN BUSINESS ENTERPRISES
LOCATED IN U.S. WEST COMMUNICATIONS' 14 STATE REGION.

I. INTRODUCTION

On February 25, 1998, pursuant to Section 706 of the Telecommunications Act of 1996, U S WEST Communications, Inc. (hereinafter "US WEST") filed its petition in the above captioned cause requesting the Federal Communications Commission (hereinafter "Commission") to forebear the application of rules that hinder the rapid development and deployment of innovative new technologies. For the reasons described herein, the National Black Chamber of Commerce, and other interested African American business enterprises (hereinafter collectively referred to as "Minority Business Commenters") maintain that the public interest demands that US West's petition should be denied.¹ More specifically, the Minority Business Commenters contend that the Commission should begin an inquiry into the effects of the convergence of existing communication technologies, particularly as this convergence relates to US West's behavior towards small and minority business enterprises.

¹The other African American businesses participating in these comments include OJC Transfer and Delivery Service, Inc.; 1-A Rob Moving, Inc.; Reliable Maintenance Company, PAS Communications; Investment Systems Corp., d/b/a American Office Corp.; RMES Communication, Inc; and Erwin Trucking. All of the foregoing African American businesses are also members of the National Black Chamber of Commerce.

II. CONVERGENCE AND THE TREATMENT OF MINORITY BUSINESS ENTERPRISES

Under Section 706 of the Telecommunications Act of 1996, the Commission shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capabilities to all Americans. There are important elements of Section 706 that have a particular bearing upon the Commission's review of US West's petition in this instance that should be examined in greater detail before the Commission removes the regulatory barriers to US West's new Internet services. Particularly, these factors require that any action taken by the Commission be done in a manner consistent with the public interest, and that the Commission's actions should promote competition in the local telecommunications market.

The commission recently noted in Bell Atlantic's similar 706 filing that matters involving the entry of the Regional Bell Operating Companies (RBOCs) into advanced communication technologies presented important issues of first impression that warranted greater participation by the public in comments presented to the Commission. *In re the Matter of Bell Atlantic's Petition for Relief from Barriers to Deployment of Advanced Telecommunications Services*, Order in Docket No. 98-11, at ¶ 2. (February 25, 1998). Additionally, in MM Docket No. 94-34, *In re the Matter of Implementation of Commission's Equal Employment Opportunity Rules*, the Commission expressed its concern that the convergence of telecommunications technologies had significant implications for the application of Equal Employment Opportunity rules to both telecommunication common carriers such as US West, and to mass media communication companies. Certain commenters in Docket No. 90-34 specifically raised this concern:

Joint Commenters believe that the EEO provisions of the Communications Act should apply to all carriers regulated by Title II of the Communications Act, that they are now required

only to adopt an EEO program and submit an Annual Employment Report. They assert, considering the convergence of technology that is taking place, that the same EEO requirements should apply to all competitors. They argue that the basis for FCC EEO jurisdiction of these entities is the nexus between content based services and technologies and that, with essential services such as newspapers and books being increasingly accessed by means of sophisticated digitized multi-media technology, common carriers are no longer content neutral. They argue that the policies of diversity once reserved for content based services must be applied to services that will control access to information in digitized format because by controlling this access, these services significantly receive advanced communications services. Joint Commenters maintain that revised EEO oversight in the common carrier field will greatly advance the goal of minority and female representation in upper-management. U.S. West rejects Joint Commenters' arguments.

Report in MM Docket No. 94-34, ¶ 72. (October 5, 1994), 9 FCC Rcd. 6276, 6312 (1994).

All of these arguments relating to EEO provisions and requirements should apply with equal force to the RBOC's, including US West's, treatment and utilization of minority business enterprises under the Small Business Administrations Minority Business Enterprise (MBE) programs. Pursuant to 15 U.S.C. § 635 et seq., the Small Business Administration is tasked with the duty to ensure that all contractors with the Federal government implement procurement programs that utilize to the greatest extent possible, MBEs that also qualify as disadvantaged business enterprises as defined by 15 U.S.C. § 637(a)(4)(A). It is the experience of African American enterprises engaged in business in the states encompassing US West's service territory that it has failed to meet its obligations under the SBA program to contract with MBEs/DBE's. Indeed, the experience of African American businesses in US West's territory has demonstrated that the company is regressing in its utilization of African American contractors in many significant respects.

The discriminatory treatment of African American DBEs led to the filing of a lawsuit by the Minority Business Commenters in Federal District Court in Denver, Colorado in 1996. The following facts are just a sampling of the evidence that has been discovered and presented in the

lawsuit against US West:

- The dollar value of US West's contracts with African American DBEs have decreased in both real and actual dollars.
- US West terminated contracts with African American DBEs more or less simultaneously before the lawsuit was filed in 1996.
- Within US West, various ethnic/gender groups have powerful advocates whereas no such advocate exists for African American firms.
- To the extent African American companies have gained business from US West, it has been largely through legal action or through the threat of legal action.
- There is no consistent Minority/Women owned business enterprises ("MWBE") policy within US West and no enforcement mechanism to require US West prime contractors to contract with MWBE's and African American companies in particular.
- Throughout US West's fourteen state area, there are very few legitimate contracts with African American DBEs.
- African American DBEs are frequently denied contracts by US West in favor of less experienced and qualified MBEs owned by other ethnic minorities and women.
- Those African American DBEs that are successful in obtaining contracts from US West encounter racially inspired difficulties in executing the contracts.
- US West ignored the recommendations of its own Regional Task Force, which was convened after the NAACP filed suit against Pac Bell. US West paid only lip service to its intent expressed to the Task Force to design a model MWBE program and then failed to implement the Task Force's key recommendations.
- US West used RMES Communications, one of the Minority Business Commenters, to assure public officials that it was meeting its goals with respect to its utilization of African American DBEs. These representations by US West enabled it to obtain significant public contracts involving the Denver International Airport. Once these contracts were obtained, US West reneged on its commitment to fully utilize and mentor RMES as a contractor on the airport project and no other African American MBE/DBE was contracted hired to fulfill its commitment.

The discrimination against African American contractors evidenced by US West's conduct has important implications with respect to the public interest inherent in removing the regulatory

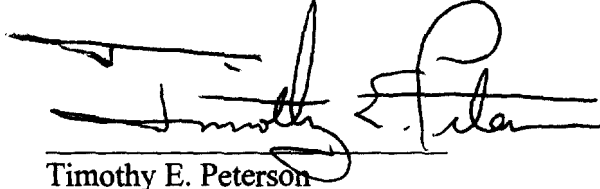
barriers to US West's provision of new Internet services. The SBA MBE/DBE program is part of the Small Business Administration's program to advance the interests of not just MBEs/DBEs, but is part of the SBA's efforts to advance the interests of all small businesses against the market power of larger business enterprises. Consequently, when a large business enterprise such as US West acts in a discriminatory fashion against one group of small businesses in one aspect of its massive enterprise, this anti-competitive conduct confers an unfair advantage upon US West that it can use to leverage its activities against other small competitors in some other aspect of its far flung business activities.

Consequently, it is incumbent upon the Commission to investigate anti-competitive conduct upon the part of US West in any aspect of its far flung business enterprises. To ignore such conduct is to confer an unfair competitive advantage upon US West in its provision of new Internet services. Such a result would be contrary to Section 706's specific provision that the Commission's actions foster competition in the provision of new telecommunication services.

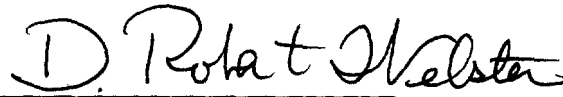
III. CONCLUSION

Wherefore, the National Black Chamber of Commerce, and the African American businesses within the fourteen state area covered by US West respectfully request that US West's petition be denied. Moreover, the Minority Business Commenters request that the Commission give the same significance to the procurement programs of common carriers such as US West as it does to equal employment opportunity programs. Providing equal opportunity to MBE/DBE contractors is as important to the realization of the public interest in communications policies as are the achievement of equal employment goals in the business affairs of telecommunications companies.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'Timothy E. Peterson', written over a horizontal line.

Timothy E. Peterson
Of Counsel
BAMBERGER & FEIBLEMAN

A handwritten signature in black ink, appearing to read 'D. Robert Webster', written over a horizontal line.

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On behalf of
The National Black Chamber of Commerce
OJC Transfer and Delivery Service, Inc.
1-A Rob Moving, Inc.
Reliable Maintenance Co.
PAS Communications
Investment Systems Corp.
RMES Communications, Inc.
Erwin Trucking, Inc.

CERTIFICATE OF SERVICE

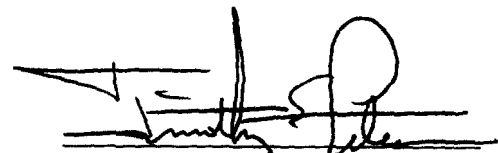
I certify that a copy of the foregoing "Comments" has been served upon the following parties either by hand delivery or by first class U.S. mail, postage prepaid this 18th day of March, 1998.

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